

REMARKS

Claims 1 – 4, 7, 13, 16, 19, 22, 25, 28, 31, 34, 37, 42, 44, 52, 56 and 60 – 66 are pending in this application. Claims 1 and 61 have been amended to reclaim the scope to which Applicant is entitled. Namely, the subject matter, canceled in claims 1 and 61 that is not necessary to overcome the prior art, has been moved into dependent claims 62 – 66 in view of the newly discovered information, as explained in detail hereinabove. No new matter has been added.

Applicant wishes to thank the examiner for indicating allowable subject matter of claims 7, 13, 16, 19, 28, 31, 34, 37, 42, 44 and 61.

According to the Office Action, claims 1 – 4, 22, 25, 52, 56 and 60 are rejected under 35 USC 102(e) as being anticipated by US Patent 7,496,081 (Salokannel). In response, the rejections are respectfully traversed as lacking sufficient factual support and failing to establish a case of anticipation in accordance with the established cases and statutory law.

It is respectfully submitted that pursuant to 35 USC 102(e), a person shall be entitled to a patent unless:

“(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.”

It is respectfully submitted that Salokannel was filed on 05-19-2004 claiming a continuation-in-part benefit to Application Serial No. 10/838,217 filed 05-05-2004. It is believed that the portions of the disclosure that the examiner relies upon to reject Applicant's claims are not found in the '217 application. Hence, Salokannel's date as the prior art reference is 05-19-2004.

The current application is the national phase of the international application PCT/IB2005/050474 filed 02/04/2005. This international application claims the benefit of two US provisional applications: Serial No. 60/542,529 filed 02-06-2004, and Serial No. 60/628,410 filed 11-16-2004. The priority of those 2 applications was properly claimed. See “Notice of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.495” dated 07/07/2008. Hence,

the earliest priority date of the present application, based on its earliest filed provisional application, is 2-6-2004. It is believed that Applicant's currently pending claims are fully supported by the US provisional application Serial No. 60/542,529, filed 2-6-2004. If the examiner disagrees, he is respectfully requested to present evidence to the contrary. In the absence of such evidence from the examiner, it is respectfully submitted that Salokannel does not qualify as prior art under 35 USC 102(e) in the present application. It is further submitted that Salokannel does not qualify as prior art under 35 USC 102(e) even if the earliest Salokannel's application, with its filing date of 05-05-2004, is relied upon in the Office Action, the proposition with which Applicant's representative neither agrees nor acquiesces.

An earnest effort has been made to be fully responsive to the examiner's correspondence and advance the prosecution of this case. In view of the above amendments and remarks, it is believed that the present application is in condition for allowance, and an early notice thereof is earnestly solicited.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

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